

ENTERED

May 30, 2019

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISIONMICHAEL BOURNE,
TDCJ #1567258,

Plaintiff,

v.

LIEUTENANT GUNNELS, et al.,

Defendants.

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CIVIL ACTION NO. H-16-0515

ORDER

On April 16, 2019, the Fifth Circuit issued an Opinion remanding this case for further consideration of the prisoner civil rights complaint filed by state inmate Michael Bourne (Docket Entry No. 75). Bourne has now filed a Motion for Award of Costs, namely the appellate filing fee of \$505.00, as the successful party on appeal under Fed. R. App. P. 39(a)(3) and 39(e)(4) (Docket Entry No. 73). The defendants have filed Defendants' Response to Plaintiff's Motion for Award of Costs (Docket Entry No. 79), opposing the request. The Motion for Award of Costs is denied for reasons explained briefly below.

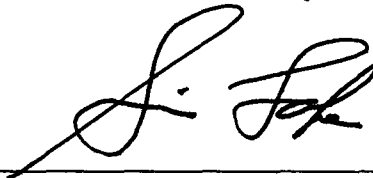
The defendants note that Bourne failed to comply with procedures found in Fed. R. App. P. 39(d)(1) by submitting an itemized statement of costs to the Fifth Circuit within 14 days of

the judgment (Docket Entry No. 79, pp. 2-3). "A party who wants costs taxed must – within 14 days after entry of judgment – file with the circuit clerk, with proof of service, an itemized and verified bill of costs." Fed. R. App. P. 39(d)(1) (emphasis added). After the opposing party has an opportunity to object, the circuit clerk will then prepare and certify an itemized statement of costs for insertion in the mandate. Fed. R. App. P. 39(d)(3). Bourne failed to comply by submitting a request for costs to the Fifth Circuit in compliance with Fed. R. App. P. 39(d)(1). As a result, there are no costs taxed or assessed against the defendants in the Fifth Circuit's Mandate, which issued on May 8, 2019 (Docket Entry No. 74).

Because the Fifth Circuit has not certified that costs are taxable to the defendants, it is **ORDERED** that the Motion for Award of Costs filed by Michael Bourne (Docket Entry No. 73) is **DENIED**.

The Clerk will provide a copy of this Order to the parties.

SIGNED at Houston, Texas, on this 30th day of May, 2019.

A handwritten signature in black ink, appearing to read "S. Lake", written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE